

THEODORE V. WELLS JR. (Admitted *Pro Hac Vice*)
MOSES SILVERMAN (Admitted *Pro Hac Vice*)
MICHAEL E. GERTZMAN (Admitted *Pro Hac Vice*)
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019
Telephone: (212) 373-3000
Facsimile: (212) 757-3990

MICHAEL J. SHEPARD (State Bar No. 91281)
MICHAEL A. ZWIBELMAN (State Bar No. 224783)
HELLER EHRMAN LLP
333 Bush Street
San Francisco, California 94104-2878
Telephone: (415) 772-6000
Facsimile: (415) 772-6268

Attorneys for Defendant
CHARLES W. McCALL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLES W. McCALL and JAY M.
LAPINE,

Defendants.

Case No.: CR-00-0505-MJJ

**STIPULATION AND ~~PROPOSED~~
ORDER SETTING BRIEFING
SCHEDULE FOR DEFENDANTS
McCALL'S AND LAPINE'S
RENEWED MOTIONS FOR
JUDGMENTS OF ACQUITTAL
PURSUANT TO RULE 29**

The Honorable Martin J. Jenkins
Date: March 8, 2007
Time: 2:00 p.m.
Courtroom 11, Nineteenth Floor
Trial Date: September 11, 2006

1 The United States and defendants Charles W. McCall and Jay M. Lapine, through
2 their respective counsel, stipulate and agree as follows:

3 **RECITALS**

4 1. On June 4, 2003, this Court unsealed a second superseding indictment (“the
5 Indictment”) containing charges against Mr. McCall and Mr. Lapine. The charges, which
6 relate to accounting irregularities reported to the market by the McKesson Corporation in
7 April 1999, include conspiracy to commit securities fraud, fraud in connection with the
8 purchase and sale of securities, filing false documents with the United States Securities and
9 Exchange Commission, circumventing internal accounting controls, and falsifying books,
10 records, and accounts.

11 2. Trial in this matter began on September 11, 2006.

12 3. Mr. McCall and Mr. Lapine moved for judgments of acquittal pursuant to
13 Federal Rule of Criminal Procedure 29 at the close of the government’s case-in-chief and
14 renewed the motions at the close of evidence.

15 4. The case was submitted to the jury on Friday, October 27, 2006.

16 5. On Friday, November 3, 2006, the jury returned verdicts of not guilty as to
17 Mr. McCall and Mr. Lapine on Count 1 of the Indictment, Conspiracy to Commit Securities
18 Fraud, 18 U.S.C. § 371. The jury was unable to reach a verdict as to Mr. McCall or Mr.
19 Lapine on any of the remaining six counts, and the Court declared a mistrial as to Counts 2,
20 4, 5, 6, 7 and 8 of the Indictment and discharged the jury.

21 6. Pursuant to Federal Rule of Criminal Procedure 29, Mr. McCall and Mr.
22 Lapine must file Motions for Judgments of Acquittal, if either seeks to make such a motion,
23 on or before November 10, 2006, within seven days after the Court discharged the jury.

24 7. In order to accommodate the professional schedules of counsel, all
25 undersigned parties agree that, with this Court’s permission, the briefing schedule for Mr.
26 McCall’s and Mr. Lapine’s Motions for Judgments of Acquittal, if either brings such a
27 motion, shall be as follows: Mr. McCall’s and Mr. Lapine’s motions would be due on or
28 before December 22, 2006; the government’s opposition would be due on or before January

26, 2007, and Mr. McCall's and Mr. Lapine's reply briefs would be due on or before February 23, 2007. The motions would be heard, with the Court's permission, on March 8, 2007, in conjunction with the status conference scheduled in this matter.

STIPULATION

Based on the foregoing, IT IS HEREBY STIPULATED AND AGREED that, with this Court's permission, Mr. McCall's and Mr. Lapine's Motions for Judgments of Acquittal, if either brings such a motion, shall be due on or before December 22, 2006; the government's opposition shall be due on or before January 26, 2007; Mr. McCall's and Mr. Lapine's reply briefs shall be due on or before February 23, 2007; the motions, if brought, shall be heard on March 8, 2007 in conjunction with the scheduled status conference; and a Motion for Judgment of Acquittal filed by Mr. McCall or Mr. Lapine on or before December 22, 2006 shall be deemed timely filed under the Federal Rules of Criminal Procedure.

IT IS SO STIPULATED AND AGREED.

DATED: November 8, 2006

Respectfully submitted,

PAUL, WEISS, RIFKIND, WHARTON, &
GARRISON LLP

By /s/ Theodore V. Wells, Jr.
Theodore V. Wells Jr.

-- and --

HELLER EHRMAN LLP

By /s/ Michael J. Shepard
Michael J. Shepard

Attorneys for Defendant
CHARLES W. MCCALL

1 DATED: November 8, 2006

UNITED STATES OF AMERICA

3 By /s/ Timothy P. Crudo

4 Timothy P. Crudo
5 Brian J. Stretch
6 Office of the United States Attorney
7 450 Golden Gate Avenue
8 Eleventh Floor
9 San Francisco, CA 94102
10 (415) 436-7200
11 (415) 436-7234 FAX

Attorneys for the United States

12 DATED: November 8, 2006

TOPEL & GOODMAN

13 By /s/ Marcus S. Topel

14 Marcus S. Topel
15 Lyn Agre
16 Topel & Goodman
17 832 Sansome Street, Fourth Floor
18 San Francisco, CA 94111
19 (415) 421-6140
20 (415) 398-5030 FAX

Attorneys for Defendant
JAY M. LAPINE

21 Pursuant to the foregoing stipulation, IT IS SO ORDERED.

22 DATED: November 14, 2006



United States District Judge